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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,942	03/30/2001	Sanjeev Midha	8246	8169

27752 7590 09/23/2003

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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 09/23/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/821,942

Applicant(s)

MIDHA ET AL.

Examiner

Lakshmi S Channavajjala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

Receipt of amendment B is acknowledged.

Claims 19 and 23 have been withdrawn. Claims 1-18 and 20-22 are pending.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-18 and 20-22 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 103***

Claims 1-18 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,637,291 to Bara et al (Bara, also used in the previous action) in view of GB 22600985 ('GB '985).

Bara teaches hair care and skin-care compositions, for example eye line care, tinted gel compositions etc., comprising hollow particles of an expanded copolymer of vinylidene chloride and acrylonitrile, or vinylidene chloride, methacrylate and acrylonitrile, wherein the internal cavity is filled with a gas or a hydrocarbon such as isobutene (col. 2, lines 56-67 and col. 3, lines 1-20). In particular, Bara teaches the particles sold under the name EXPANCEL 551 DE 50, 551 DE 20, 551 DE 12, etc. (col. 3, lines 26-42), all of which are also described in the instant application (page 6). Bara also teaches the particle size, density as claimed in the instant claims 3-4 and 13-14. It is implicit from the teachings of Bara, that the polymer particles possess a thermoplastic wall and thus meet the limitations of claims 5-9. Bara uses the same polymer for the preparation of the particles. All the examples in columns 7-9 recite water, which meets the claim limitation, "aqueous carrier". The amounts of particles and the polymers

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disclosed in examples in columns 6-9 of Bara are within the claimed ranges. Bara does not explicitly state "leave-in hair cosmetic" or "leave-in hair conditioning" composition, as claimed. However, Bara teaches mascara (col. 5, lines 38-42), which reads on leave-on hair composition. Bara fails to specifically teach the instant hydrophobically modified polymer. However, Bara teaches gelling agents such as Carbopol, polyacrylates, polymethacrylate, carboxymethyl cellulose, hydroxypropylmethylcellulose, xanthan gums etc., (paragraph bridging cols 3-4 and examples in col. 7-9), in general. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention that all types of Carbopol polymers, including hydrophobically modified as well as unmodified Carbopol are suitable as gelling agents in the compositions.

Alternatively, GB '985 teaches hair conditioner composition comprising hydrophobically modified acrylic polymers for conditioning hair (page 4-6). GB '985 teaches that the polymers are water-soluble, insoluble or dispersible (page 7). The polymers of GB '985 also include acrylic or acrylate polymers that are hydrophobically modified. The hair conditioning properties of the hydrophobically modified polymers are described on pages 15-20 suggesting that the polymers provide good conditioning, durability, no build-up characteristics, and less bleed-off effect in hair coloring compositions. Therefore, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to substitute the conventional polymers such as polyacrylamides, cellulose derivatives or acrylic or acrylate polymers of Bara with the hydrophobically modified copolymers because GB '985 provide great flexibility in preparing cosmetic compositions and in particular, provide excellent hair conditioning in various hair care products such as shampoos, conditioners, coloring products etc.

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Accordingly, one of an ordinary skill in the art would have expected improved conditioning effect with the composition of Bara, containing hydrophobically modified polymers.

Instant claims 20-22 recite a method of increasing the hair volume by applying the claimed composition. While Bara does not explicitly state increasing the hair volume, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention that any material (such as a mascara or hair protecting or soothing) when applied to hair would obviously result in increased volume of hair as compared to the hair volume before application.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 703-308-2438. The examiner can normally be reached on 7.30 AM -4.00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.



Lakshmi S Channavajjala  
Examiner  
Art Unit 1615  
September 17, 2003



THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600